

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

CAROL THOMAS,

No. 3:16-cv-03819-CRB

Plaintiff,

**ORDER DISMISSING WITH LEAVE
TO AMEND**

v.

SAN FRANCISCO HOUSING
AUTHORITY, et al.,

Defendants.

/

In her First Amended Complaint (“FAC”), Plaintiff Carol Thomas, appearing pro se, seeks \$400,000 in damages from the San Francisco Housing Authority (“SFHA”) and an individual defendant (collectively “Defendants”) for alleged racial discrimination and retaliation. FAC (dkt. 14) at 2, 6. This Court dismisses the FAC sua sponte with leave to amend.

I. PROCEDURAL BACKGROUND

On July 13, 2016, Magistrate Judge Laporte granted Plaintiff’s request to proceed in forma pauperis (“IFP”). Order Regarding Appl. to Proceed IFP (dkt. 6); see also Appl. to Proceed IFP (dkt. 3). After Plaintiff declined magistrate jurisdiction, see Declination (dkt. 7), on July 19, 2016, Magistrate Judge Laporte recommended dismissal of the Complaint, Compl. (dkt. 1), with leave to amend and directed that the case be reassigned to a district

1 court judge. Report and Recommendation (dkt. 8) at 1 (“R&R”); see Order Reassigning
2 Case (dkt. 9). The case was reassigned to this Court.

3 Magistrate Judge Laporte recommended that the case be dismissed because the
4 Complaint failed to state Plaintiff’s own race or otherwise “provide any factual basis” for the
5 discrimination claim. See R&R at 2; Compl. Further, Magistrate Judge Laporte held that the
6 Complaint failed to establish a nexus between a prior housing-discrimination allegation and
7 the actions taken against Plaintiff germane to the current case, and that it failed to provide the
8 required “short and plain statement of the claim showing that the pleader is entitled to relief.”
9 Id. (quoting Fed. R. Civ. P. 8(a)(2)). This Court adopted Magistrate Judge Laporte’s
10 recommendation and gave Plaintiff leave to amend. Order Adopting R&R (dkt. 12).

11 On August 26, 2016, Plaintiff filed the FAC.

12 **II. LEGAL STANDARD**

13 A complaint filed by any person proceeding, or seeking to proceed, IFP under 28
14 U.S.C. § 1915(a) is subject to mandatory sua sponte review and dismissal if the complaint is
15 frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks
16 monetary relief from a defendant immune from suit. 28 U.S.C. § 1915(e)(2)(B); Lopez v.
17 Smith, 203 F.3d 1122, 1126–27 (9th Cir. 2000).

18 To state a claim, a complaint must state enough facts to raise a reasonable expectation
19 that discovery will reveal evidence of the claim. Bell Atl. Corp. v. Twombly, 550 U.S. 544,
20 556. Dismissal is also appropriate when the complaint “lack[s] . . . a cognizable legal
21 theory.” Robertson v. Dean Witter Reynolds, Inc., 749 F.2d 530, 534 (9th Cir. 1984). A
22 complaint need only contain “a short and plain statement of the claim showing that the
23 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Although it need not contain “detailed
24 factual allegations, . . . a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to
25 relief’ requires more than labels and conclusions, and a formulaic recitation of the elements
26 of a cause of action will not do. Factual allegations must be enough to raise a right to relief
27 above the speculative level.” Twombly, 550 U.S. at 555 (quotations omitted in original)
28 (citations omitted). The complaint must “contain sufficient factual matter, accepted as true,

1 to ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678
2 (2009) (quoting Twombly, 550 U.S. at 570). It must include “factual content that allows the
3 court to draw the reasonable inference that the defendant is liable for the misconduct
4 alleged.” Id. (citing Twombly, 550 U.S. at 556).

5 The district court must assume the truth of all factual allegations and construe them in
6 the light most favorable to the plaintiff. See, e.g., ARC Ecology v. U.S. Dep’t of Air Force,
7 411 F.3d 1092, 1096 (9th Cir. 2005) (citation omitted). However, pro se litigants are “not
8 excused from knowing the most basic pleading requirements.” Am. Ass’n of Naturopathic
9 Physicians v. Hayhurst, 227 F.3d 1104, 1107 (9th Cir. 2000) (citation omitted).

10 III. DISCUSSION

11 This Court is now obligated to conduct a mandatory sua sponte review of the FAC
12 pursuant to 28 U.S.C. § 1915(a). Although the FAC expanded upon the Complaint with
13 some factual background and addressed the issue of jurisdiction, it is still legally insufficient
14 under Rule 8(a).

15 A. The Facts

16 The FAC does not provide the requisite facts necessary for this Court to reasonably
17 infer that Defendants are liable under either claim. Besides stating Plaintiff’s and the
18 individual defendant’s races, FAC at 2, the FAC does not adequately address the deficiencies
19 that Magistrate Judge Laporte identified in the Complaint. See R&R at 2. While Plaintiff
20 recounts being denied a transfer from a studio to a one-bedroom unit within the SFHA-
21 operated building and filing an administrative complaint, FAC at 3–4, she does not explain
22 how this prior allegation motivated the retaliation at the heart of the FAC.¹ Rather, Plaintiff
23 concludes that “[h]er request was denied because the manager gives preference to the Asian
24 tenants.” Id. Further, the identity of the individual defendant is altogether unclear: while the
25 Complaint refers to Amanda “Vernon,” Compl. at 1, the FAC references Amanda “LNU.”
26 FAC at 2. In any event, the only allegation against the individual defendant is conclusory

27
28 ¹ Indeed, it is also unclear if the FAC seeks relief for the apartment-transfer discrimination claim
administered dismissed on September 17, 2014, FAC at 3–4, or whether said claim merely serves
as background for the more recent set of allegations.

1 rather than factual, and therefore it is legally insufficient. Plaintiff simply states that the
2 defendant, an Asian herself, manifests racial animus by treating Asian tenants more favorably
3 than others. See id. at 2–4. But even then it is unclear if the individual defendant, described
4 as the “Property Manager the for [sic] Ping Yuen property,” id. at 2, was the individual who
5 denied Plaintiff’s apartment transfer request, id. at 3–4, failed to “correct[] the amount of
6 money on [Plaintiff’s] rental statement” around the time of said apartment-transfer denial, id.
7 at 4, or refused to pay for “damage caused to [Plaintiff’s] carpet during the most recent
8 annual inspection of [Plaintiff’s] unit.” Id. at 5.

9 **B. The Claims**

10 In addition, the FAC does not identify the legal basis for either claim, thereby making
11 it impossible to ascertain whether the allegations rise above speculation. Instead, the FAC
12 generally states the areas of law that could yield potential liability and leaves it to the Court
13 and Defendants to sort out the legal claims actually advanced.²

14 While the FAC identifies Title VIII of the Civil Rights Act of 1968 or the Fair
15 Housing Act (“FHA”), 42 U.S.C. §§ 3601–19, as the legal basis for the racial discrimination
16 claim, FAC at 2, it does not provide the elements of such a claim or allege any facts in
17 support of any of the elements.

18 The FHA prohibits “discriminat[ion] against any person in the terms, conditions, or
19 privileges of sale or rental of a dwelling, or in the provision of services or facilities in
20 connection therewith, because of race, color, religion, sex, familial status, or national origin,”
21 42 U.S.C. § 3604(b), and allows plaintiffs to establish such a claim based on either disparate
22 treatment or disparate impact. See Gamble v. City of Escondido, 104 F.3d 300, 304–05 (9th
23 Cir. 1997) (citations omitted) (stating that, since courts analyze FHA discrimination claims
24 like employment discrimination under Title VII of the Civil Rights Act of 1964, plaintiffs
25 can argue FHA discrimination as disparate treatment or disparate impact). Here, Plaintiff
26 alleges disparate treatment, FAC at 4, but provides no details beyond conclusory allegations
27 to raise her right to relief beyond a speculative level. See id. at 2–4.

28 ² Nor does the FAC identify which claims are brought against which Defendants.

1 Moreover, Plaintiff asserts “[d]isparate treatment based on race and disability
2 discrimination.” FAC at 4. But the FAC includes no allegations relating to Plaintiff’s
3 disability status, and so it cannot plausibly support a claim of discrimination or retaliation on
4 such basis.

5 The retaliation claim suffers from similar deficiencies as the discrimination claim:
6 though the FAC points to Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d–d-7,
7 as the legal basis for the retaliation claim, FAC at 4, it does not discuss the legally necessary
8 elements or how the facts support them.

9 | IV. CONCLUSION

10 Accordingly, the Court DISMISSES this action under 28 U.S.C. § 1915(a). Plaintiff
11 has thirty (30) days to file an amended complaint, which should conform to Rule 8 and
12 address the deficiencies identified in this Order. Failure to timely amend could result in the
13 dismissal of Plaintiff's case with prejudice.

14 The Court reiterates Magistrate Judge Laporte's suggestion, see R&R at 2, that
15 Plaintiff seek free assistance with the Legal Help Center, located in the United States
16 Courthouse in San Francisco on 450 Golden Gate Avenue, 15th Floor, Room 2796 (Plaintiff
17 may make an appointment in person or by calling 415-782-8982), and obtain a free copy of
18 the Pro Se Handbook online at www.cand.uscourts.gov or in the Office of the Clerk of Court,
19 located in the United States Courthouse in San Francisco on 450 Golden Gate Avenue, 16th
20 Floor.

IT IS SO ORDERED.

23 || Dated: September 15, 2016



CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE